

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
WACO DIVISION**

MURRAY WALTER PISONY,

*Plaintiff/Counterclaim  
Defendant,*

v.

COMMANDO CONSTRUCTION, INC.  
and JAMES MCLEOD HOLDINGS, INC.,

*Defendants/Counterclaim  
Plaintiffs.*

Case No.: 6:17-cv-00055 RP-JCM

JURY DEMAND

**DECLARATION OF JAMES A. MCLEOD IN SUPPORT OF  
DEFENDANTS/COUNTERCLAIM PLAINTIFFS'  
OPENING CLAIM CONSTRUCTION BRIEF**

I, James A. McLeod, hereby state and declare as follows:

1. I am President of Commando Construction, Inc. ("Commando") and the sole shareholder of James McLeod Holdings, Inc. ("JMH"). I have personal knowledge of the facts stated herein and, if called as a witness, I could and would testify competently to them. I am over the age of eighteen, competent to make this declaration, and do so based on personal knowledge.

2. I am a United States citizen and I reside in Manitoba, Canada. I have resided in Manitoba since 1972.

3. Commando is a Canadian corporation lawfully organized under the Business Corporations Act of the Province of Alberta, and has had a principal place of business in Manitoba, Canada since 2004.

4. JMH is a Canadian corporation lawfully organized under The Corporations Act of the Province of Manitoba. I am the sole shareholder of JMH, and JMH is the sole shareholder of Commando. JMH does not conduct any business in the United States.

5. In 1997, I filed a patent application claiming a machine that collects elongate pieces of lumber ("skids") used to support gas or oil pipe line while it is being laid into the ground ("Skid Hustler"). This patent application eventually issued on August 10, 1999 as U.S. Patent No. 5,934,861 (the "'861 patent"), listing me as sole inventor.

6. Commando was incorporated in 1999 by me and Plaintiff Murray Walter Pisony ("Pisony"). Pisony and I were officers and sole shareholders of Commando, with each owning 50% of the shares of Commando. Commando was incorporated for the purposes of manufacturing, selling and leasing the Skid Hustler machines claimed in the '861 patent.

7. Pisony and I built the first Skid Hustler prototype in 1999, which included, among other things: a lifting assembly including a hydraulic cylinder attached between the vehicle and the side conveyor to raise and lower the forward end of the side conveyor; and a rear conveyor mounted on a subframe pivotally connected to a main frame, and hydraulic cylinders to raise and lower the subframe about the pivotal connection to the main frame and another set of hydraulic cylinders to move the conveyor frame forward and backward on the subframe.

8. In 2000, Pisony and I replaced the rear conveyor of the Skid Hustler with a stacking and bundling assembly (the "2000 Skid Hustler").

9. In 2000, Pisony and I filed a patent application on the modified 2000 Skid Hustler, which eventually issued as U.S. Patent No. 7,320,202.

10. Eventually a dispute arose between Pisony and me, requiring me to file several claims against Pisony in the Court of Queen's Bench of Alberta.



11. On July 30, 2004, pursuant to a settlement agreement disposing of all claims in several actions filed by me against Pisony in the Court of Queen's Bench of Alberta, Pisony transferred all shares and assets of Commando to me.

12. Unknown to me at the time, while the actions were pending, Pisony was building his own Skid Hustler machine.


13. In 2008, Commando, through me and several independent contractors, built a new Skid Hustler. The 2008 machine is substantially similar to the 2000 Skid Hustler, but the picking assembly was removed and replaced with a grappling assembly to collect lumber from the ground, and the rear conveyor from the 1999 Skid Hustler was mounted on the side of the machine to serve as the side conveyor.

14. Since 2008, Commando has manufactured three more Skid Hustlers having the same configuration as the modified 2008 Skid Hustler machine.

\* \* \* \*

The matters stated in this declaration are true and accurate to the best of my personal knowledge. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

EXECUTED this 19 day of July 2018, in VASSAR, MB CANADA

  
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James A. McLeod